



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0693]

RIN 1625-AA00

Safety Zone, Elizabeth River; Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Elizabeth River in Portsmouth, VA for 12 periods of 48 hours beginning at midnight on January 5, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30 and April 6, 2015. This action will restrict vessel traffic movement in the designated area during construction of the new Midtown Tunnel. This action is necessary to protect the life and property of the maritime public due to the number of work vessels in the designated area and their lack of maneuverability while engaged in construction operations.

DATES: This rule will be effective from January 5, 2015, through April 6, 2015. This rule will be enforced for 12

periods of 48 hours in length, beginning at midnight on January 5, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30, and April 6, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0693]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757)-668-5580, e-mail [HamptonRoadsWaterway@uscg.mil](mailto:HamptonRoadsWaterway@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202)-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

SKW Constructors are building a second span for the Midtown Tunnel between Portsmouth and Norfolk, VA and will be conducting operations that require closures of the federal channel beginning in January 2015. A Notice of Proposed Rulemaking (NPRM) was published on August 25, 2014 in the Federal Register (79 FR 50571).

The Coast Guard received one comment on the NPRM, which is addressed below in Section C. No request for a public meeting was received, and no meeting was held.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Due to increased vehicle traffic in the Hampton Roads

area, SKW Constructors, in concert with Elizabeth River Crossings and the Virginia Department of Transportation, is constructing a second tunnel parallel to the existing Midtown Tunnel between Portsmouth and Norfolk, VA. The construction will involve submerging elements of the new Midtown Tunnel. The presence of working vessels and the inability to maneuver submerged equipment necessitate closures of the federal channel. The closures will be in effect for 12 48-hour periods to allow SKW Constructors to install the segments of the tunnel that overlap the federal channel.

The Coast Guard is establishing a safety zone in the portion of the Elizabeth River between Elizabeth River Channel Buoy 31 (LLNR 9835) and Elizabeth River Channel Buoy 34 (LLNR 9855). The first of the 12 scheduled closures will begin at midnight on January 5, 2015; the final scheduled closure will begin at midnight on April 6, 2015. The dates and hours are subject to change due to weather, scheduling conflicts, equipment failure and other unforeseen factors. Any changes to these dates will be listed in the Federal Register if time permits, and in all cases will be communicated via marine information broadcasts.

### C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard received one comment expressing concern about the lengths of the closures and the economic impact on business operations. The comment also requested a working group of industry members and the Coast Guard to determine the potential impact of the closures. No formal working group was assigned, but the Coast Guard and SKW participated in extensive dialogues over several years with a wide range of port partners and interested parties including, but not limited to, the Virginia Maritime Association, Virginia Pilots Association, Association of Virginia Docking Pilots, Independent Docking Pilots, and U.S. Navy. In addition to being discussed at meetings exclusively pertaining to the Midtown Tunnel, the topic has been on the agenda at multiple Area Maritime Security Committee and Maritime Transportation System Planning Subcommittee meetings, at which port partners, including industry representatives, were afforded the opportunity to discuss the potential impact of the closures.

The decision to close the channel for 12 periods of 48 hours in length comes as a result of these extensive and widespread discussions, which have been occurring since the

earliest proposals for the project in 2007. Every effort has been made to reduce the length of time the channel is closed and any adverse impacts resulting therefrom. Based on these efforts, it was determined that 12 closures of 48 hours in length constitutes the best available means to complete the project. Further, 12 separate closures, rather than one extended closure, will enable SKW to complete the work while enabling traffic to flow between the closure periods, making it the least burdensome and best available plan.

The NPRM published on August 25, 2014 stated that the first channel closure would begin on January 1, 2015. The first closure will actually begin on January 5, 2015 at midnight. This change is reflected in the instant Final Rule.

The Captain of the Port of Hampton Roads is establishing a safety zone in the portion of the Elizabeth River between Elizabeth River Channel Buoy 31 (LLNR 9835) and Elizabeth River Channel Buoy 34 (LLNR 9855). The zone will be effective for 12 periods of 48 hours in length, with each respective period beginning at midnight on January 5, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30

and April 6, 2015. The dates and hours are subject to change due to weather, scheduling conflicts, equipment failure and other unforeseen factors. Any changes to these dates will be listed in the Federal Register if time permits, and in all cases will be communicated via marine information broadcasts. No person or vessel may enter or remain in the regulated area unless authorized by the Captain of the Port, Hampton Roads or his designated Representative.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and

Budget has not reviewed it under those orders. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the specified portion of the Elizabeth River during the specified dates and times.



This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration; and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will

not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of

Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone. This rule is categorically excluded from further review under paragraph (34) (g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T05-0693 to read as follows:

§ 165.T05-0693 Safety Zone, Elizabeth River; Portsmouth, VA.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads. Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25-10: the marked channel of the Elizabeth River between Elizabeth River Channel Buoy 31 (LLNR 9835) and Elizabeth River Channel Buoy 34 (LLNR 9855).

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port,

Hampton Roads or his designated Representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period. This section will be enforced for 12 periods of 48 hours in length beginning at midnight on January 5, January 12, January 19, January 22, January 27, February 9, March 2, March 5, March 10, March 23, March 30 and April 6, 2015. Any deviations from these times will

be communicated via marine information broadcasts.

Dated: October 17, 2014

Christopher S. Keane  
Captain, U.S. Coast Guard  
Captain of the Port Hampton Roads

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